

Exhibit A

**ROBERT VERNON SHAFFER, JR. - May 30, 2014
DESIGNATED REPRESENTATIVE OF UTMB**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

.....
:
STEPHEN McCOLLUM, STEPHANIE :
KINGREY, and SANDRA McCOLLUM, :
individually and as heirs :
at law in the Estate of :
LARRY GENE McCOLLUM, :
Plaintiffs, :
:

VS. :

CIVIL ACTION NO.

3:12-cv-02037

BRAD LIVINGSTON, JEFF PRINGLE, :
RICHARD CLARK, KAREN TATE, :
SANDREA SANDERS, ROBERT EASON, :
THE UNIVERSITY OF TEXAS :
MEDICAL BRANCH and the TEXAS :
DEPARTMENT OF CRIMINAL JUSTICE, :
Defendants. :
:
:

.....
ORAL AND VIDEOTAPED DEPOSITION OF
THE DESIGNATED REPRESENTATIVE OF
THE UNIVERSITY OF TEXAS MEDICAL BRANCH
BY AND THROUGH
ROBERT VERNON SHAFFER, JR.

MAY 30, 2014

.....
ORAL AND VIDEOTAPED DEPOSITION OF THE DESIGNATED
REPRESENTATIVE OF THE UNIVERSITY OF TEXAS MEDICAL BRANCH
BY AND THROUGH ROBERT VERNON SHAFFER, JR., produced as a
witness at the instance of the Plaintiffs, and duly
sworn, was taken in the above-styled and numbered cause
on Friday, May 30, 2014, from 2:18 to 5:21 p.m., before
Mary C. Dopico, Certified Shorthand Reporter No. 463 and
Notary Public in and for the State of Texas, reported by
machine shorthand and audio/video recording at the
offices of Rebecca Sealy Hospital, 404 8th Street,
Galveston, Houston, Texas, pursuant to Notice and Court
Order and the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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1 criteria. We'll go out there, identify all of their
2 repositories or information resources that they may
3 store stuff on and then we'll go out there and conduct a
4 search.

5 Q. Okay. Let's talk about that more in just a
6 minute. Let's go ahead -- I'm going to mark this as
7 Exhibit 1.

8 (Shaffer Exb. No. 1 was marked.)

9 Q. (By Mr. Flammer) I'm handing you what's been
10 marked as Exhibit 1. Have you seen this document
11 before?

12 A. I have.

13 Q. Okay. And this is the notice of the
14 deposition; is that correct?

15 A. Yes, sir.

16 Q. And can you turn with me to Exhibit A?

17 A. I'm there.

18 Q. Are you speaking here on behalf of UTMB today?

19 A. I am.

20 Q. Okay. And are you the witness that UTMB has
21 produced to talk about UTMB's document retention
22 policies today?

23 A. I am not.

24 Q. You're not?

25 A. Not for document retention.

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1 Q. Okay. Who would we speak to about document
2 retention?

3 A. I'd have to defer to legal. I -- I'm not the
4 expert in that field. I can't point to an individual.
5 There might be other people. It's really the person who
6 is in charge of that area.

7 Q. Okay.

8 A. I do know it's a compliance function here at
9 UTMB, so it would probably be one of the leaders in the
10 compliance area.

11 Q. Okay. Let's go to number 2 on Exhibit A. It
12 says: The date and scope of any litigation holds,
13 preservation letters, etcetera, that were sent from
14 outside counsel to UTMB and/or that were communicated
15 internally within UTMB regarding any litigation
16 regarding the heat conditions in Texas prisons.

17 Are UT -- Are you UTMB's witness on that
18 issue?

19 A. I am not.

20 Q. Okay. Number 3 is: The date and scope of any
21 litigation holds, preservation letters, etcetera, that
22 were sent from outside counsel to UTMB and/or that were
23 communicated internally within UTMB regarding any
24 litigation regarding this case.

25 Are you UTMB's witness on that issue?

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1 A. I am not.

2 Q. Number 4 is: All steps taken by UTMB to
3 preserve and retrieve electronically-stored information
4 that may be relevant to this litigation.

5 Are you UTMB's witness on that?

6 A. Partial witness.

7 Q. Can you explain?

8 A. I don't do all steps. I just have a small
9 component of it as far as retrieving information --
10 primarily e-mail, things like that.

11 Q. So are you saying that you are the agency
12 representative of all steps taken by UTMB to retrieve
13 electronically stored information that may be relevant
14 to this litigation but you are not UTMB's witness as to
15 all steps taken by UTMB to preserve electronically
16 stored information that may be relevant to this
17 litigation?

18 A. I am not.

19 Q. For either?

20 MS. COOGAN: Well, perhaps you could ask
21 him what he knows about those subjects, whether --
22 rather than whether he's a designated witness for those
23 subjects.

24 MR. FLAMMER: Understood. Okay. I think
25 what I'll do is go through these categories --

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1 MS. COOGAN: Sure.

2 MR. FLAMMER: -- and just make sure we're
3 on the same page; and then -- then I can ask the
4 questions and see if he's the person we need to talk to;
5 and if he's not, then we'll just move on.

6 Q. (By Mr. Flammer) Let's look at category
7 number 5, the back-up tape -- Actually, let's look at
8 4, just to be clear. You said partial. Can you just
9 explain more what you mean?

10 A. Well, there is a component that belongs to
11 legal; and there's a component that belongs to other
12 departments throughout the university. So I primarily
13 look for documents in e-mails that might be part of
14 the -- an information store or somewhere else that's
15 stored on a -- on a drive or a local computer, something
16 like that. But there's other relative -- relevant
17 information that may or may not be out there that I
18 wouldn't be involved in.

19 Q. Okay. But as it comes to electronically
20 stored information --

21 A. No, I'm not the one that -- Again, a partial.
22 I don't see go out and look for, you know, medical
23 records or anything like that. That's usually something
24 that's conducted by another party.

25 Q. What about e-mails?

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1 A. E-mail, yes.

2 Q. Okay. Is there anybody else who's UTMB's
3 witness on e-mail?

4 A. No.

5 Q. Okay.

6 A. I'm the witness on the e-mails.

7 Q. And what about documents stored either on
8 servers or people's computers?

9 A. I would be considered that individual, as
10 well.

11 Q. Okay. Okay. Okay. Let's look at number 5.
12 Now, the back-up architecture at UTMB, including what is
13 backed up, when it is backed up, how long those back-up
14 tapes are retained, and how long information that is
15 backed up is retained on back-up tapes.

16 Are you UTMB's witness on that category?

17 A. I'm a witness, yes.

18 Q. Okay. Number 6: What efforts were made to
19 determine who the key players are in this case and what
20 was to done to preserve and retrieve electronically
21 stored information in their possession, custody or
22 control?

23 A. I am not.

24 Q. Okay. Number 7 is: The efforts that have
25 been taken and can be taken to obtain any potentially

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1 relevant electronically stored information that was
2 either manually deleted or that was purged through
3 automatic document retention policies.

4 A. I am --

5 Q. Are you --

6 A. -- the witness.

7 Q. You are the witness --

8 A. Yes.

9 Q. -- for UTMB on number 7?

10 A. Yes.

11 Q. Number 8: Whether any electronically stored
12 information that may be relevant to this case has been
13 deleted.

14 Are you UTMB's witness on number 8?

15 A. I am the witness.

16 Q. And number 9: Whether any electronically
17 stored information that may be relevant to this case is
18 irretrievable.

19 Are you UTMB's witness --

20 A. I am --

21 Q. -- on that topic?

22 A. -- UTMB's witness.

23 Q. And if you would, I do -- I do the same thing
24 when I'm talking, if you would, just let me finish the
25 question before you answer --

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1 A. All right.

2 Q. -- just so she can get it down.

3 A. Not a problem.

4 Q. And I'll try to do the same for you.

5 Number 10: What efforts can be taken to
6 obtain any electronically stored information that has
7 been deleted?

8 Are you UTMB's witness on that topic?

9 A. I am.

10 Q. Number 11: The identity of any electronically
11 stored information that has been depleted or that is
12 irretrievable.

13 Are you UTMB's witness on that topic?

14 A. I am.

15 Q. Number 12: A physical location of
16 electronically stored information that may be relevant
17 to this case.

18 Are you UTMB's witness on that category?

19 A. You know, I'd have to go back to a partial
20 witness. I mean, I can testify to it, to what I know;
21 but, yeah, I'll be the witness. Yeah, I am the witness
22 to what I know.

23 Q. Okay. Is that not part of your -- your area
24 of expertise?

25 A. Well, it is. Yeah -- my area of expertise is

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1 broad. I'm at -- The IT infrastructure here, it's not
2 like I have complete knowledge of everything. It's
3 somewhat broad and limited in certain areas.

4 So I'm not going to sit here and -- and
5 pretend like I'm an expert in all areas of this because
6 I'm not. You know, when it comes to the security
7 related things, yes. You know, like your back-up, I'm
8 not the -- the know-all to end-all. I can talk to it in
9 general terms.

10 Q. Okay. Number 13: All efforts taken
11 concerning the preservation of electronically stored
12 information related to heat-related illness of inmates
13 in TDCJ prison facilities where inmates are housed in
14 non-air-conditioned areas.

15 Are you UTMB's witness on that topic?

16 A. I am not.

17 Q. Number 14: All efforts taken concerning the
18 preservation of electronically stored information
19 related to incidents where inmates have died from
20 heat-related causes in TCDJ prison facilities where
21 inmates are housed in non-air-conditioned areas.

22 Are you UTMB's witness on that topic?

23 A. I am not.

24 MR. FLAMMER: Ms. Coogan, are there any
25 other witnesses that you plan on presenting today?

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1 MS. COOGAN: There are not any more
2 witnesses that I plan on presenting today. And I will
3 say this for the record, whether he can provide you with
4 the information that you need with regard to these broad
5 categories of course will depend on the questions that
6 you ask.

7 So, I would say just for the record that
8 these are all very, very, very broad categories; and
9 there's a certain amount of vagueness to them, as well.

10 So the best way to determine whether this
11 witness can answer the specific questions you have in
12 mind is simply to ask him. I think he'll -- might
13 surprise you with how much he does know.

14 Q. (By Mr. Flammer) Okay. Let's turn to the
15 next page on Exhibit B. Exhibit B is a subpoena for
16 documents.

17 Have you brought any documents with you
18 today?

19 A. That or we've got some litigation hold
20 requests and then we have your -- so I guess this is a
21 notice to take oral disposition (sic) of rule -- so --

22 Q. Okay.

23 A. -- that's all I have.

24 Q. May I see these, please?

25 THE WITNESS: Is that okay?

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1 several places we'd look. One, our initial I guess
2 investigation would start at the Exchange server itself,
3 where that mailbox resides. We would go in there and,
4 you know, look through all the e-mails.

5 Okay. Then we'll go out there and see if
6 that person's been assigned network shares. If they've
7 been assigned network shares, we go out there and look
8 for .psts. Then we'll go out and look for that
9 computer, desktop, and then we'll do a search on that
10 desktop to see if they have any .psts out there.

11 Q. Okay.

12 MR. FLAMMER: Do you-all want to take a
13 break for a couple minutes?

14 MS. COOGAN: Sure.

15 THE VIDEOGRAPHER: Off the record at
16 3:16.

17 (Off the record from 3:16 - 3:24.)

18 THE VIDEOGRAPHER: Back on the record at
19 3:24.

20 MR. FLAMMER: Okay. Thank you. And,
21 Ms. Coogan, I just want to talk about what we talked
22 about during the break.

23 I asked for a -- for you to go get
24 somebody to talk about UTMB's document retention
25 policies, and you wanted to respond to that request.

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1 MS. COOGAN: When I got your subpoena,
2 which was Exhibit A, I understood this entire exhibit to
3 be re -- was about how documents are retained within the
4 computer system, and that's what this witness can talk
5 about.

6 I did not understand what I think you're
7 asking for now which is how long documents are retained?
8 Is that -- Am I right?

9 MR. FLAMMER: Yes.

10 MS. COOGAN: Okay. So I know I've
11 already produced it once before. Let me reproduce the
12 document, UTMB document retention plan, and that's just
13 for Correctional Managed Care.

14 MR. FLAMMER: Okay. Thank you. Let's go
15 ahead and have this marked.

16 MS. COOGAN: Yeah. Let's do.

17 MR. FLAMMER: And then also --

18 MS. COOGAN: Hang on. She can't type and
19 listen to you at the same time.

20 (Shaffer Exb. No. 3 was marked.)

21 MS. COOGAN: If I could just finish my
22 response to you --

23 MR. FLAMMER: Go ahead.

24 MS. COOGAN: We don't have any objection
25 to producing a witness to talk about how long documents

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1 are retained under the document retention plan; but this
2 witness is -- is here about how long they're physically
3 kept on the computers, which is what -- as part of
4 electrically -- electronically stored information, which
5 is what I understood you to be asking for.

6 MR. FLAMMER: And what about a witness on
7 categories 2, 3, 13, and 14, and 6?

8 MS. COOGAN: It depends on what you want
9 to know about those things. The litigation hold letters
10 were produced by this witness.

11 MR. FLAMMER: And those are the documents
12 that were just handed to me?

13 MS. COOGAN: Yeah -- No. Well --

14 MR. FLAMMER: Or Exhibit No. 2?

15 MS. COOGAN: Whatever it was that you got
16 from the witness earlier, to the extent that they exist.

17 MR. FLAMMER: (Nods head affirmatively.)

18 MS. COOGAN: So what is it -- What kind
19 of witness is it that you want to know? What is it that
20 you want to know about that, so I can know what kind of
21 witness to get.

22 MR. FLAMMER: I mean, the categories that
23 were in the subpoena.

24 MS. COOGAN: And I hear what you're
25 saying, and I'm confessing that I don't understand your

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1 categories. I don't understand what kind of witness you
2 want.

3 I thought you wanted a computer expert,
4 and you're telling me that's not what you want; is that
5 right?

6 MR. FLAMMER: It's more than that.

7 MS. COOGAN: Okay.

8 MR. FLAMMER: It's more than just the
9 computer -- computer expert. But why don't we do this?
10 Why don't we continue on -- But go ahead. I mean,
11 can -- can you produce these people today?

12 MS. COOGAN: Which people on which -- on
13 which subject?

14 MR. FLAMMER: Well, I mean, UTMB's
15 document retention policy. So, for example, how long
16 certain documents are retained, like spreadsheets
17 perhaps tracking heat-related illnesses.

18 MS. COOGAN: What is the document
19 retention policy on how long they're supposed to be
20 retained? Or how are they retained on the computer?

21 MR. FLAMMER: Both.

22 MS. COOGAN: Okay. This witness can talk
23 to you about how they're retained on the computer.

24 If you're talking about a witness that
25 can testify about the document retention plan and

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1 compliance, policy 6.1.5 of the UTMB Handbook, I can do
2 that for you. I can't do it today, but I can do that.

3 MS. OSTEEEN: Can I talk?

4 MS. COOGAN: Yeah.

5 MS. OSTEEEN: I need to talk to you.

6 MS. COOGAN: Presumably now.

7 THE VIDEOGRAPHER: Do you want to go off
8 the record?

9 MR. FLAMMER: Yeah. Let's go ahead and
10 go off the record. Thank you.

11 THE VIDEOGRAPHER: Off the record at
12 3:28.

13 (Off the record from 3:28 - 3:29.)

14 THE VIDEOGRAPHER: Back on the record at
15 3:29.

16 MS. COOGAN: So I think part of my
17 confusion is that if it's patient related and it's in
18 the electronic medical record, those are going to be
19 part of TDCJ's records. Right?

20 MS. OSTEEEN: Retention policies.

21 MS. COOGAN: Retention policies. But I
22 can produce somebody that can say that for you.

23 MR. FLAMMER: So are you saying that UTMB
24 doesn't keep records for the -- doesn't keep records
25 pertaining to individual inmates?

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1 MS. OSTEN: This is all --

2 MS. COOGAN: Yeah, I don't either. Okay
3 so we will just have to produce somebody who can talk
4 about the electronic medical record and then all of
5 these categories, Exhibit 3, identifies the categories
6 of documents that are retained.

7 So maybe that will shed some light on the
8 kind of witness that you want me to -- to produce; or
9 maybe you can help me be more specific with what you're
10 looking for.

11 MR. FLAMMER: Okay. And what about
12 category number 2, the date, scope of any litigation
13 holds, preservation letters, etcetera, that were sent
14 from outside counsel to UTMB and/or that were
15 communicated internally within UTMB regarding any
16 litigation regarding the heat conditions in Texas
17 prisons?

18 MS. COOGAN: You have anything that
19 came -- Nothing came from outside counsel.

20 MR. FLAMMER: Okay.

21 MS. COOGAN: So if you want to know about
22 preservation letters on litigation holds, you're holding
23 them in your hand.

24 MR. FLAMMER: And that's Exhibit 2.

25 MS. COOGAN: Yes.

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1 MR. FLAMMER: Okay. And these were all
2 internal -- I haven't had a chance to look at these.
3 It looks like these were all internal communications
4 regarding litigation holds.

5 MS. COOGAN: Well, take -- take a look at
6 them and if you want to -- if we want to talk about --
7 obviously there's -- some of those are going to be
8 attorney/client and attorney work-product, have
9 privileged information within them. Not within the
10 document, but within the confidential communications.
11 But if you need to talk to -- If you want to know when
12 they were done, you have them in your hand.

13 MR. FLAMMER: Okay. So this -- So this
14 is the scope, so -- Exhibit 2 is the scope of any
15 preservation letters, litigation holds, that were sent
16 regarding heat --

17 MS. COOGAN: They are the letters.

18 MR. FLAMMER: They are the letters.

19 MS. COOGAN: They are the letters, yes.

20 MR. FLAMMER: Okay.

21 MS. COOGAN: They're not just about the
22 scope of it. They are the actual preservation
23 materials.

24 MR. FLAMMER: Okay. And what about
25 category -- So are you -- Are you say -- So you're

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1 saying that there really isn't a need to have a person
2 from number 2; is that -- Is that what you're saying?
3 Or there isn't a person or --

4 MS. COOGAN: You can have anybody you --
5 you want to. I'm just telling you I need -- I don't
6 understand if I've produced the actual preservation
7 letters, if you -- what kind of person you want.

8 I mean, somebody that can read English?
9 Do you want somebody that drafted them? Do you want
10 somebody who gathered the documents? Do you want
11 somebody who put them on the computer? Do you want to
12 know how they're stored on the computer? Do you want to
13 know how to print them out? Do you want to know when
14 they were destroyed. You've got to give me just a
15 little bit more information so I can get the right
16 person for you.

17 MR. FLAMMER: I just haven't had a chance
18 to look at these yet.

19 MS. COOGAN: Okay. I'm not --

20 MR. FLAMMER: During the next break, I'll
21 take a look at them.

22 MS. COOGAN: I'm not fussing at you.
23 I -- I'm telling you I -- clearly I misunderstood the
24 subpoena, and I want to make that right.

25 MR. FLAMMER: Okay.

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1 MS. COOGAN: But I need more information
2 even still.

3 MR. FLAMMER: Okay. What about category
4 number 6?

5 MS. COOGAN: I think that's completely
6 privileged, and I assert that privilege.

7 MR. FLAMMER: The whole scope of 6 is
8 privileged? Is that your position?

9 MS. COOGAN: I think that who the key
10 players are, who our persons with knowledge of relevant
11 facts is not privileged; and I think that question has
12 been answered. But what -- what was the internal
13 thought process on how those people were determined I
14 think is privileged.

15 Who I think is a key player may not be
16 the same as who you think is a key player. I think my
17 obligation is to turn over all players. Whether you
18 think they're key or not, I don't think you're entitled
19 to my opinion about that.

20 MR. FLAMMER: Okay. Okay.

21 MS. COOGAN: Maybe the "key players" is
22 the term that's ambiguous. Maybe you want to know how
23 search terms were determined. There is a hundred and --

24 MR. FLAMMER: Does UTMB have a witness
25 who can talk about how UTMB determined what users may

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1 have relevant information that should be searched?

2 MS. COOGAN: Prob -- I'm sure. Yeah.

3 MR. FLAMMER: And you'll produce --

4 MS. COOGAN: I mean, those 139
5 custodians, how those 139 custodians were chosen?

6 MR. FLAMMER: Right. And when they were
7 chosen.

8 MS. COOGAN: I'm not sure. I would have
9 to talk to UTMB about that and -- and I'll have to think
10 about whether that's privileged or not. You have the
11 139 names, and you've also been asked to submit names of
12 your own that you think are relevant. But the thought
13 process behind -- I mean, I think -- I think the Rules
14 only require that we turn over five custodians.

15 MR. FLAMMER: And -- Well, I disagree
16 with that; but that's okay. We can agree to disagree.

17 MS. COOGAN: Okay.

18 MR. FLAMMER: But, also, from our
19 perspective is when those individuals were identified
20 and when they were told to start deleting documents or
21 to preserve documents.

22 MS. COOGAN: And those would be in those
23 preservation letters that you have right in front of
24 you.

25 MR. FLAMMER: Okay.

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1 MS. COOGAN: And there is not anything
2 else.

3 MR. FLAMMER: Okay.

4 MS. COOGAN: So if you don't see it, it
5 doesn't exist.

6 MR. FLAMMER: Understood. And what about
7 categories 13 and 14? Does UTMB have a witness --

8 MS. COOGAN: Well, I mean, you can ask --
9 This witness that's here right now can tell you how --
10 what's being done regarding -- Do you mean physically
11 how are they being preserved?

12 MR. FLAMMER: Yeah, and all efforts
13 taken. So what was done? When was it done? How was it
14 done?

15 MS. COOGAN: Okay. You have the
16 preservation letters in front of you; and if it's not in
17 those preservation letters, it wasn't done. I don't
18 know how else I can say it. But this witness that's
19 here can talk about how electronically-stored
20 information was preserved once preservation letters went
21 out. And the preservation letters you have. So does
22 that answer your question?

23 MR. FLAMMER: I'm not sure if it does or
24 not; but what I propose is I'll just go ahead and --
25 Either way, there -- there are no other witnesses that

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1 you are prepared to put forth today besides
2 Mr. Schaeffer; is that correct.

3 MS. COOGAN: Not -- I have not prepared
4 to do that. If you can tell me somebody specifically, I
5 can try to do it.

6 MR. FLAMMER: Do you mean a specific
7 name?

8 MS. COOGAN: Or specifically you want --
9 what you want them to talk about.

10 MR. FLAMMER: I guess we're just having
11 some miscommunication problems, because I'm talking
12 about the topics listed on Exhibit A.

13 MS. COOGAN: And I -- I thought I was,
14 too.

15 MR. FLAMMER: All right. Why don't we
16 just go ahead and continue on --

17 MS. COOGAN: Okay.

18 MR. FLAMMER: -- with questions of
19 Mr. Shaffer and we'll address that later.

20 Q. (By Mr. Flammer) Mr. Shaffer, if an employee
21 leaves, what happens to those employees' e-mails?

22 A. When an employee leaves, we go ahead and
23 disable that account. That account is disabled for 30
24 days and then it's deleted.

25 So now a legal or -- or even a department

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1 A. No.

2 Q. Are you aware of any litigation involving
3 Eugene Blackman?

4 A. No.

5 Q. I want to talk again about one of the
6 documents that is Exhibit 2, this May 13th, 2014 e-mail,
7 the subject line: Litigation hold.

8 A. Yes. I got it. Yes.

9 Q. I see here only a few recipients, Carolanda
10 Bremond. Do you know who that person is?

11 A. I do.

12 Q. What department is she in?

13 A. Office of legal affairs.

14 Q. And then Carolee King is in legal, as well?

15 A. Yes, sir.

16 Q. We know who Owen Murray is. You're Robert
17 Shaffer. And Louis Perrin --

18 A. Is the analyst.

19 Q. -- is the analyst.

20 A. Yes.

21 Q. Security analyst.

22 Who else did this go to?

23 A. I don't know. I didn't send it out.

24 Q. Do you know if this went to any of the 139
25 users, except for Owen Murray?

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1 A. I have no idea, sir.

2 Q. Do you know -- Do you have any knowledge as
3 to whether or not any of the 139 users were sent any
4 litigation hold of any sort?

5 A. I'd know there was a survey that was sent out.
6 I don't know when it was sent out or by whom, but it's
7 my understanding that some type of survey, whether it
8 was one of the e-discovery requests like we got before
9 or something different but...

10 Q. And you said you don't know when that was sent
11 out, but was --

12 A. It was just through conversation where I
13 learned of it. So I don't know anything other than a
14 brief conversation that said there might -- there was a
15 survey that went out to individuals. I -- It wasn't
16 produced by my office.

17 Q. Okay. Do you know if that was -- if that
18 survey was filled out and sent to those people in 2014
19 or before?

20 A. I don't know. I have no idea.

21 I just know there -- It's my
22 understanding, based on a brief conversation, that there
23 was a survey sent out. I don't know who sent it out. I
24 don't know who the recipients are. I don't know who
25 responded or anything else.

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1 Q. Okay. When did you have that conversation?

2 A. Actually earlier today.

3 MR. FLAMMER: Ms. Coogan, on Exhibit A,
4 the deposition notice, for categories 13 and 14, I'm
5 just concerned, because we -- there are several
6 categories here that have been noticed; and we need to
7 be able to talk to people -- and I know I understand now
8 it's Friday, it's past 5:00 o'clock, and I imagine
9 people are gone.

10 MS. COOGAN: What would you like to talk
11 to someone about?

12 MR. FLAMMER: Categories 1, 2, 3, 6, 13
13 and 14?

14 MS. COOGAN: 13 and 14, you've got them
15 in your hand and you've asked this witness about them
16 several times. Am I mistaken?

17 MR. FLAMMER: Well, I mean, I just want
18 to be sure -- So all efforts taken concerning the
19 preservation of ESI related to heat-related illnesses of
20 inmates at TDCJ prison facilities where inmates were
21 housed in non-air-conditioned areas, you're pointing me
22 towards Exhibit 2; is that correct?

23 MS. COOGAN: That's all I'm aware of.

24 MR. FLAMMER: And so what -- I mean,
25 what I'm trying to say -- And neither of us want to

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1 argue. We just want to get to the truth here and we
2 just want to make sure we're all on the same page.

3 MS. COOGAN: Okay.

4 MR. FLAMMER: And I understand -- I hear
5 what you're saying and what you're saying is that's all
6 you know of.

7 MS. COOGAN: Right.

8 MR. FLAMMER: And that's why we noticed
9 the agency rep so we can get a full answer to the
10 question not just I don't know. Do you understand what
11 I'm saying? Is that fair?

12 MS. COOGAN: Well, all I can do is
13 present people who can answer questions.

14 MR. FLAMMER: That's all I need.

15 MS. COOGAN: And this is the guy who does
16 the electronically stored information searches, and he
17 said he got these.

18 MR. FLAMMER: But he also told me he's
19 not the person to ask about 13 and 14 or 1, 2, 3, and 6.
20 And 4 was a little ambiguous.

21 MS. COOGAN: Number 1 does not relate to
22 electronically stored information.

23 MR. FLAMMER: Right. So that's going to
24 be someone different, and we already talked about that.
25 And you'll put somebody up.

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1 MS. COOGAN: Yes.

2 MR. FLAMMER: And will you represent that
3 you and I can work together to find a reasonable time in
4 the next week to get that done?

5 MS. COOGAN: Yes.

6 MR. FLAMMER: And can that get done to
7 the Austin?

8 MS. COOGAN: No. The Rules say let's go
9 to the witness. But it's 5:00 o'clock and we both have
10 four-hour drives ahead of us.

11 So I've exhausted all of my discussions
12 with you on that. I've told you everything I know and
13 everything I can do for you.

14 So we can just play it back if you would
15 like.

16 MR. FLAMMER: I don't know what that
17 means. What do you mean?

18 MS. COOGAN: Okay. Let me say it one
19 more time.

20 Remember how I was saying how I thought
21 retention meant how it was retained on the computer, and
22 this is the witness who could answer those questions?

23 MR. FLAMMER: Right.

24 MR. GARCIA: I remember.

25 MS. COOGAN: Okay. That still is today

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1 still what I believe.

2 MR. FLAMMER: Okay.

3 MS. COOGAN: And I've given you the
4 document retention policy.

5 So I'm unclear what you need from me.

6 But we can talk about that next week, and
7 I promise to work with you on that.

8 MR. GARCIA: And, Sean, I'm going to have
9 the same problem with category number 1.

10 MR. FLAMMER: Okay.

11 MR. GARCIA: Just so you know.

12 MR. FLAMMER: Okay.

13 MS. COOGAN: I'm not opposed to it in any
14 form whatsoever.

15 MR. GARCIA: Me either.

16 MS. COOGAN: I just am not certain I
17 understand, and I don't want to produce the wrong person
18 or be accused of not having produced someone. So if
19 you're not talking about the document retention policy
20 and you're not talking about physical electronic
21 retention, I'm not sure what you mean; and, therefore,
22 I'm not sure what witness to produce.

23 MR. FLAMMER: Okay.

24 MS. COOGAN: But I'm all ears.

25 MR. FLAMMER: Would you agree with me

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1 that this is a conversation we could have had before had
2 you voiced that to me?

3 MS. COOGAN: No. I'm not going to be
4 deposed right now. Okay? I've told you my position.
5 I've said I've misunderstood. I still don't understand.
6 I'm asking for clarification; and I tell you what, I'm
7 going home. So are you done with this witness or not?

8 MR. FLAMMER: I'm done with this witness.

9 MS. COOGAN: Then this deposition is
10 terminated. Off the record. I'd love to talk about it
11 next week? I'll make an appointment? How about Monday
12 morning at the hearing? How about talking about it at
13 the hearing on Monday?

14 MR. FLAMMER: Ms. Coogan, I just want to
15 talk to you about -- You know, we noticed the
16 deposition. The court ordered that it take place today
17 at 2:00 o'clock.

18 MS. COOGAN: You're done, Mr. Shaffer.

19 MR. FLAMMER: Mr. Shaffer, thank you,
20 sir. I appreciate it.

21 MR. GARCIA: Thank you, Mr. Shaffer.

22 THE WITNESS: Thank you.

23 MR. FLAMMER: Ms. Coogan, are you not
24 willing to engage in a conversation about --

25 MS. COOGAN: I done engaged in all my

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1 conversations with you. I'm sorry I can't make you
2 understand it.

3 I need for you to tell me, if you're not
4 talking about the paper retention policy in your hand
5 and you're not talking about the electronic retention
6 policy, I don't understand what you need in from me.

7 MR. FLAMMER: I need a witness --

8 MS. COOGAN: But I'm happy to do it.

9 MR. FLAMMER: I need a witness because
10 the document is not -- I need a witness --

11 MS. COOGAN: I need a, brother. Amen. A
12 witness to talk about what?

13 MR. FLAMMER: To talk about these topics.

14 MS. COOGAN: Explain it to me. If you
15 don't want the paper retention policy and don't want the
16 electronic retention policy, what would you like? Do
17 you need somebody who can read the English and read the
18 policy to you?

19 MR. FLAMMER: That can tell me what the
20 policy is and about the policy, whether it's enforced or
21 not?

22 MS. COOGAN: The policy is the po -- You
23 have the policy. What do you mean what it is? Are you
24 being Clintonesque?

25 MR. FLAMMER: What about --

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1 MR. GARCIA: It's available online. So
2 it's available to all parties.

3 MS. COOGAN: He's got it in his hands.

4 MR. FLAMMER: What about number 13?

5 MS. COOGAN: What does it say?

6 MR. FLAMMER: All efforts taken
7 concerning preservation of ESI related to heat-related
8 illnesses of inmates in TDCJ prison facilities where
9 inmates were housed in non-air-conditioned areas.

10 And what you have told me is --

11 MS. COOGAN: No. What the witness told
12 you is that any electronically stored information
13 requests go through him; and he told you several times
14 that he would personally be aware of it because it would
15 personally come across his desk. And these are all that
16 he's aware of.

17 MR. FLAMMER: But he also told me he's
18 not the guy to ask that; and then when I asked you, the
19 answer I hear is: That's all I know of.

20 So what I -- What I need is someone that
21 the agency can designate as being the person who counsel
22 and the witness agree this is the guy or gal on this
23 issue and then that person can answer the question.

24 MS. COOGAN: Okay.

25 MR. FLAMMER: That's all.

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1 MS. COOGAN: All right. I will work on
2 that.

3 MR. FLAMMER: Just what was noticed.
4 That's all.

5 MS. COOGAN: I don't agree that that's
6 what was noticed, but I will work on it anyway.

7 MR. FLAMMER: Okay.

8 MS. COOGAN: Okay.

9 MR. FLAMMER: We're done for today.
10 Thank you. We're off the record.

11 THE VIDEOGRAPHER: Off the record.

12 (The deposition concluded at 5:21 p.m.)

13 (Signature requested.)

14 (-o0o-)